

Parental Defense Attorneys: First responders in the battle to level the playing field for parents.



Parental Defense ALLIANCE OF UTAH

Special points of interest:

- * Children have a right to purposeful and frequent visits with their parents and siblings.
- * No one at DCFS can articulate "Division Minimum Standards" for environmental neglect.

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Environmental Neglect: Division Minimum Standards

"The home did not meet Division's minimum standards." How many times have you seen that allegation in a neglect petition? Just what are the "minimum standards," anyway? A room full of CPS workers, caseworkers, health department representatives, community representatives and attorneys could not articulate the "minimum standards" at a recent "environmental summit." During discovery, DCFS cannot produce the standards and on the witness stand, caseworkers cannot list them. So, why does DCFS continue to make the assertion? Should they continue to make the assertion in the absence of any physical standard?

The Department of Human Services, pursuant to its rule-making authority,

defines "environment neglect" as "physical neglect of the environment such as absence of utilities, home conditions *below minimum standards*, hazards, etc." UAR 512-202. The Practice Model defines "environmental neglect" as "an environment that poses a threat to the physical health or safety of a child." *DCFS Practice Guidelines* p 14. DCFS established the definition to "facilitate a consistent determination whether or not a particular conduct rises to the level" of neglect. *DCFS Practice Guidelines, Definitions and Purpose*. Ask most caseworkers to explain the "minimum standards" to you and the honest ones will tell you that they don't know what standards are but they know a home is below them when they see it. Continued page 2....



Just where are the "Division's Minimum Standards" for environmental neglect?

DCFS PRACTICE MODEL: Preserving Family Relationships

How much family time between parents and their children who are in State custody is enough to maintain the relationship between parent and child? Is the suspension of parent time an appropriate sanction for a non-compliant parent? Is suspension

of parent time appropriate when children act out in foster care?

Visitation is but one of the concerns parents and their attorneys must face throughout a neglect abuse action, from the day a child is removed until

the day the child is returned to the parent's home.

It is axiomatic that visitation is critical to preserve the integrity of any family when children are removed and reunification efforts are ordered. Continued on page 2...

Preserving The Family Relationship, continued...

According to the 2003 Dependency and Termination Equal Justice Committee report from the Washington State Office of Public Defense, "visitation is the *right* of the family, including the parent and the child."

The Committee acknowledged, "the frequency and quality of visitation has been shown to be a strong indicator of a family's likelihood of success in dependency and termination cases. Adequate visitation is more likely to occur if the case plan sets specific details regarding the visitation plan, such as its frequency, location, and who is responsible for transportation. In appropriate cases, a healthy visitation plan should include an increasing variety of visitation activities as the family progresses.

The child is ultimately harmed by the suspension of visitation. Regardless of the ultimate permanency outcome,



Adequate visitation is one aspect of successful reunification.

parental visitation and contact should be encouraged throughout the case so the child is not made to feel abandoned. Even if the case plan is for termination rather than reunification, until the court enters a termination order, **family visitation remains the right of both the child and the parent** and should be facilitated, consistent with the health, safety, and welfare of the child." Page 26, 27. Visitation opportunities should be offered to children and parents to the "maximum extent possible." Page 27.

Just how much family time is necessary to maintain a parent-child relationship? The argument may be made that the juvenile court should look to the minimum schedule for parent time followed by parties in a Utah divorce action when it is safe to do so. After all, fundamental considerations are not dissimilar in an abuse/neglect proceeding: there is a physical custody change, at least one

parent no longer resides in the same residence as the children, and maintaining the parent-child relationship while ensuring the safety of the child is a paramount consideration.

Under Utah law, the minimum weekly parent time for a child under the age of 5 months, is 6 hours per week, divided into 3 sessions per week, in the "custodial home, established care setting or other place familiar to the child." UCA 30-3-35.5(2)(a)(i) For children five months to 10 months, the recommended weekly hours per week increases to 9. UCA 30-3-35.5(2)(b)(i). As children get older, the minimum number of hours per week increases.

An order for supervised visitation significantly restricts the ability for meaningful family time to occur, especially when the supervisor is DCFS. However, principles reflected in the Division's adoption of the Practice Model supports the argument that frequent family time is a fundamental element to any meaningful family treatment and reunification plan. Continued on page 3...

"Visitation is the right of the family, including the parent and the child."

Environmental Neglect: Division "minimum standards"

In a recent mediation, the assistant attorney general conceded that her client could not articulate the minimum standard and the language was stricken from the petition. At a pre-trial hearing, a DCFS supervisor admitted to the Judge that she was unable to list the minimum standard.

So what? Under Utah law, a petition alleging abuse and neglect must contain a "precise statement of facts,

separately stated, to support the conclusion" that a minor is abused or neglected. U.C.A. 78-3a-305. A conclusion by DCFS that a home is "below the Division's minimum standards" should be vigorously opposed on grounds that there is no "standard" to apply and such a conclusion by DCFS as the basis for a request for a neglect finding is contrary to Utah law.



Who loses in the "best interest of the child" tug-of-war when the neglect alleged is a dirty house?

Schedule of Upcoming Events

January 20, 2006 St. George, Utah

February 17, 2006 Price, Utah

March 17, 2006 Provo, Utah

April 14, 2006 Salt Lake City, Utah

May 4, 5 2006 Annual Seminar

Locations will be announced as the particular dates draw nearer. The annual Parental Defense Seminar will be held May 4 and 5 2006. Set aside those dates now!

We'd like to hear your suggestions for the Annual Seminar.

Each event will consist of a luncheon seminar. 1 hour of CLE credit has been approved. Lunch and registration will be free to public defenders and for a nominal fee to private counsel.

The focus of each luncheon will be use of the DCFS practice model, an introduction to the concept of a "family advocate," and discussion of particular concerns or problems faced by attorneys in each jurisdiction. We look forward to meeting and talking with each of you.



Be sure to make a note of free training available in your area in the future.

DCFS Practice Model: Preserving Family Relationships, continued...

The DCFS Practice Model provides the authority for the argument for "frequent and meaningful" family time. "Purposeful and frequent visitation with parents and siblings is a child's right, not a privilege or something to be earned or denied based on behavior of the child or parent." *DCFS Practice Guidelines Major Objective 303.1*. All children need and are entitled to enduring relationships that provide a sense of family, stability and belonging. *DCFS Practice Model Fundamental Principle "Permanency"*. It is a major objective of the Division to practice in a manner consistent with its fundamental principles. *DCFS Practice Guidelines 10.3*. DCFS rec-

ognizes the child's right to "purposeful and frequent visitation with parents and siblings." *DCFS Practice Guidelines 303.1*. Until the court terminates parental rights, then, DCFS Policy recognizes the child's right to an "enduring relationship" and "sense of family" between the child and his/her parents and siblings, and DCFS must structure its treatment plan to support and facilitate those relationships.

When the goal is reunification, children in out of home placements must be placed within close proximity to the parents. *DCFS Practice Guidelines 302.1*. Placement within close proximity is necessary in order for purposeful and frequent visitation to occur.

Visitation plans for children and their parents and siblings must be outlined in the family plan and "specific arrangements will be made between parents and out of home caregivers."

DCFS Practice Guidelines 303.1(D).

While reunification is the goal, children placed in out of state placements may make two visits per year to the state for contact with their parents **at the state's expense.** *DCFS Practice Guidelines 303.1(G)(1)*.

When, under the circumstances, distance is a consideration of visitation, DCFS must consider alternate means of transportation support and, when weekly visits are not feasible, longer visits must be scheduled as frequently as possible, with "other means of communication encouraged between visits." *DCFS Practice Guidelines 303.1(E)*.

DCFS Guidelines provide an ample source for the parents' argument for frequent and meaningful contact with their child. Defense counsel are encouraged to raise the court's awareness of the Practice Model and DCFS' commitment to its principles.

"Purposeful and frequent visitation with parents and siblings is a child's right, not a privilege or something to be earned or denied based on behavior of the child or parent." *DCFS Major Objective 303.1*



The family treatment plan is the roadmap to reunification.



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We're on the web!
www.parentaldefense.utah.gov

The Parental Defense Alliance of Utah was formed to provide attorneys engaged in the defense of parents in abuse and neglect proceedings with education and training opportunities across the State. The Parental Defense Alliance will develop legal forms and documents available for download in the near future on-line at www.parentaldefense.utah.gov.

The attorneys involved in the organization are available to attorneys and citizens to discuss particular case needs or to assist in researching legal issues or experts as needed. The monthly newsletter will provide defense counsel with practical approaches to every-day representation considerations utilizing the DCFS Practice Model to maximize the State's commitment to reunification of Utah's families. Information about access to family advocates across the state will be disseminated and explained. Low cost CLE's will be available throughout the year, and a yearly two-day conference will provide attorneys with the opportunity to remain up-to-date with the latest developments in child welfare law and to dialogue with other attorneys practicing in this dynamic and emotionally charged arena.

Just Who Are We, Anyway?

ATTORNEY MIKE THOMPSON practices extensively in child welfare. He has served in the Utah House of Representatives where he chaired the House Health and Human Services Committee and Child Welfare Oversight Committee, both of which cover the areas involved in parental defense, abuse, neglect and other parental rights issues. Mr. Thompson has attended national conferences highlighting child welfare law and has been a featured speaker on parental rights issues in various forms.

ATTORNEY JOHN NORMAN is the Executive Director of the Utah Mortgage Lender's Association which provides education to the mortgage

industry. Because education is integral to the Parental Defense Association's role, Mr. Norman has an intimate knowledge of what is needed to deliver training and education to a statewide constituency.

ATTORNEY SHARON S. SIPES is in private practice and has been a member of the Public Defender's Association for Weber County since 1999. Ms. Sipes has used the DCFS Practice Model extensively and has presented on the use of the Practice Model in every day practice.

Mike, John and Sharon are all available to discuss with you your education and practice needs. Please give them a call.

